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Optimer Pharmaceuticals LLC,  
MSD Investment Holdings (Ireland),  
and MSD International GmbH

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MERCK SHARP & DOHME CORP.,  
CUBIST PHARMACEUTICALS LLC,  
OPTIMER PHARMACEUTICALS LLC,  
MSD INVESTMENT HOLDINGS  
(IRELAND), AND MSD INTERNATIONAL  
GMBH.

**Plaintiffs.**

v.

ACTAVIS LABORATORIES FL, INC.,

Defendant.

x

: Civil Action No. 15-6541 (CCC)(MF)  
: Civil Action No. 20-534 (CCC)(MF)  
: (consolidated)

(Filed Electronically)

x

## **ORDER CONSOLIDATING CASES FOR ALL PURPOSES**

THIS MATTER, having come before the Court jointly by counsel for all parties, for an order consolidating the above-referenced cases pursuant to Federal Rules of Civil Procedure 1 and 42; and all counsel having consented to this Order, and for good cause shown,

IT IS on this 10 day of Feb., 2020,

**ORDERED** that Civil Action Nos. 15-6541 (CCC)(MF) and 20-534 (CCC)(MF) (collectively, the “Consolidated Actions”) are consolidated for all purposes, including discovery, case management, and trial, subject to further order of the Court;

**IT IS FURTHER ORDERED** that all counsel who have been admitted *pro hac vice* in Civil Action No. 15-6541 shall be deemed to be admitted *pro hac vice* in Civil Action No. 20-534;

**IT IS FURTHER ORDERED** that the Discovery Confidentiality Order in Civil Action No. 15-6541 (D.I. 49, as modified by subsequent stipulations and orders, including D.I. 128, 145) shall govern the Consolidated Actions;

**IT IS FURTHER ORDERED** that all fact and expert discovery previously taken in Civil Action No. 15-6541 shall be deemed properly taken in both of the Consolidated Actions;

**IT IS FURTHER ORDERED** that any additional discovery to be taken in the Consolidated Actions shall be limited to (i) the completion of depositions of the experts previously identified in Civil Action No. 15-6541 based on the already submitted expert reports, and (ii) any discovery Merck may reasonably require in light of FDA correspondence produced after Civil Action No. 15-6541 was suspended that raises issues relevant to Defendant’s invalidity claims (if any);

**IT IS FURTHER ORDERED** that each of the stipulations previously entered in each of the Consolidated Actions shall apply fully in both of the Consolidated Actions. For avoidance of doubt and without limitation, the parties stipulate that for purposes of this litigation only, the submission of amended ANDA No. 208443 constitutes infringement of the Asserted Claims (as defined in Civil Action No. 15-6541 D.I. 68) pursuant to 35 U.S.C. § 271(e)(2), provided those claims are not proven invalid, and the commercial manufacture, use, sale, offer to sell, and/or

importation of Actavis's Amended ANDA Product (as defined in Civil Action No. 20-534

D.I. 1) prior to the expiration of the Asserted Claims would further infringe the Asserted Claims pursuant to 35 U.S.C. §§ 271(a), 271(b), and/or 271(c), provided those claims are not proven invalid;

**IT IS FURTHER ORDERDED** that the parties shall submit a proposed schedule to govern the Consolidated Actions in accordance with the timing set forth in paragraph 3 of D.I. 141 in Civil Action No. 15-6541;

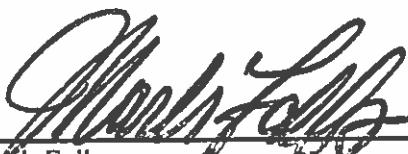
**IT IS FURTHER ORDERED** that all filings in the Consolidated Actions shall use the above caption; and

**IT IS FURTHER ORDERED** that Civil Action No. 15-6541 shall be the Lead Case and all filings going forward in the Consolidated Actions are to be made under Civil Action No. 15-6541 only. The Clerk of Court shall designate Civil Action No. 20-534 as closed for administrative purposes.

It is **SO ORDERED**.

DATED: 2/10/20

By:



Mark Falk  
Hon. Mark Falk  
UNITED STATES MAGISTRATE JUDGE